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In re Application of:	:	
MURRENHOFF, Hubertus, et al.	:	
U.S. Application No.: 10/527,204	:	DECISION ON PETITION TO
PCT No.: PCT/EP2003/008550	:	WITHDRAW HOLDING OF
International Filing Date: 01 August 2003	:	ABANDONMENT
Priority Date: 11 September 2002	:	(37 CFR 1.181)
Atty Docket No.: Moog Gmbh - Murrenhoff	:	
For: VALVE WITH INCREASED	:	
DYNAMIC RESPONSE	:	

This decision is issued in response to the "Petition For Revival Of An Application For Patent Abandoned Unavoidably Under 37 CFR 1.137(a)" filed 16 October 2006, treated herein as a petition under 37 CFR 1.181 to withdraw the holding of abandonment based on applicants' purported failure to receive the Notification Of Missing Requirements (Form PCT/DO/EO/905) mailed 16 August 2005. No petition fee is required.<sup>1</sup>

### **BACKGROUND**

On 01 August 2003, applicants filed international application PCT/EP2003/008550. The international application claimed a priority date of 11 September 2002, and it designated the United States. On 22 April 2004, the International Bureau (IB) communicated a copy of the international application to the United States Patent and Trademark Office (USPTO). The deadline for submission of the basic national fee was thirty months from the priority date, i.e., 11 March 2005.

On 10 March 2005, applicants filed a Transmittal Letter for entry into the national stage in the United States accompanied by, among other materials, payment of the basic national fee and a translation of the international application into English.

On 01 August 2005, applicants filed a status inquiry with respect to the application.

On 16 August 2005, the United States Designated/Elected Office (DO/EO/US) mailed a Notification Of Missing Requirements (Form PCT/DO/EO/905) indicating that a declaration acceptable under 37 CFR 1.497 and the surcharge for filing the declaration later than thirty months after the priority date were required.

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<sup>1</sup> The \$500 petition fee filed with the present petition will be refunded to counsel's Deposit Account.

On 04 November 2005, applicants filed a second status inquiry.

On 12 May 2006, applicants filed a third status inquiry.

On 08 August 2006, the DO/EO/US mailed a "Notification Of Abandonment" (Form PCT/DO/EO/909) indicating that the application was abandoned for failure to file a response to the Notification Of Missing Requirements mailed 16 August 2005.

On 16 October 2006, applicants filed the "Petition For Revival Of An Application For Patent Abandoned Unavoidably Under 37 CFR 1.137(a)" considered herein under 37 CFR 1.181. The petition asserts that applicants did not receive the Notification of Missing Requirements mailed 16 August 2005, and that abandonment of the application for failure to respond to such Notification is therefore improper.

### **DISCUSSION**

Applicants filed the present petition under 37 CFR 1.137(a); however, where an applicant seeks withdrawal of a holding of abandonment based on the failure to receive an Office communication, a petition under 37 CFR 1.137(a) is not required. Rather, a petition under 37 CFR 1.181 is appropriate.

Section 711.03(c)II of the MPEP sets forth the requirements for such a petition, as follows:

The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact the a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. For example, if a three month period for reply was set in the nonreceived Office action, a copy of the docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action.

The present petition includes the required statement from practitioner Peter K. Sommer that the Notification Of Missing Requirements was not received by applicant. However, the petition does not include the additional required statement from the practitioner that "a search of the file jacket and docket records" confirms that the Notification of Missing Requirements was not received.

With respect to the docket records' requirement, the present petition does not include the required docket records for counsel's firm listing all replies due in the Office on 17 October

2005, the date on which a response to the Notification Of Missing Requirements was due (16 October 2005, the actual two-month response deadline, was a Sunday).

Based on the above, applicants have not satisfied the requirements for a petition to confirm the failure to receive an Office communication. Accordingly, on the present record, it cannot be concluded that applicants did not receive the Notification Of Missing Requirements mailed 16 August 2005. Withdrawal of the holding of abandonment is therefore not appropriate at this time.

It is noted that applicants' 16 October 2006 submission included the executed declaration and surcharge payment required by the Notification Of Missing Requirements.

### CONCLUSION

Applicants' petition for withdrawal of the holding of abandonment under 37 CFR 1.181 is **DISMISSED** without prejudice. The application remains abandoned.

If reconsideration on the merits of the petition is desired, a proper response must be filed within **TWO (2) MONTHS** of the mail date of the present decision. Any request for reconsideration should include a cover letter entitled "Renewed Petition Under 37 CFR 1.181" and must include the required additional statement from the practitioner's and the proper docket records, as discussed above and in the MPEP.

The \$500 petition fee included with the present submission will be refunded to Deposit Account No. 19-3320.

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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